



January 9, 2004

Marlene H. Dortch,
Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *In the Matter of Federal-State Joint Board on Universal Service*, CC
Docket 96-45, **Comments on Petition of NPCR, Inc. d/b/a Nextel
Partners for designation as an ETC in the State of Tennessee**

Dear Ms. Dortch:

Pursuant to the notice published in the Federal Register on December 30, 2003, the National Association of State Utility Consumer Advocates (“NASUCA”),¹ submits these comments concerning the application for eligible telecommunications carrier (“ETC”) status in the State of Tennessee filed by NPCR, Inc. d/b/a Nextel Partners (“Nextel”) pursuant to 47 U.S.C. 214(e). The application filed by Nextel is for areas in Tennessee currently served by BellSouth Corporation, a non-rural incumbent local exchange carrier, and by United Inter MT-TN (“United”), a rural local incumbent local exchange carrier. As previously stated to the Commission, NASUCA’s perspective is as a representative of the consumers who are intended to benefit from the universal service programs of the

¹ NASUCA is an association of 44 consumer advocates in 42 states and the District of Columbia. NASUCA’s members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. See. e.g., Ohio Rev. Code Chapter 4911.

1996 Act, but who also pay for those programs. In reviewing this applications and others,² the Commission should consider the following:

First, the Federal-State Joint Board on Universal Service (“Joint Board”) is currently examining ETC issues referred by the Federal Communications Commission (“Commission”).³ Many of the comments filed -- including those from NASUCA⁴ -- propose substantial changes to the Commission’s rules that govern the ETC designation process. Given the pendency of this review, it should be clear that if this application is granted, in granting the application the Commission should explicitly state that the continuing eligibility of the applicant is contingent on any future changes to the rules, and that those rules will be binding on these applicants. No applicant -- particularly a relatively new ETC designee -- should be able to claim any estoppel or other variation of entitlement to the universal service support allowed ETCs under any current rule(s) subsequently superseded.

On a more substantive level, the Commission must note that the public interest is a key Congressionally-mandated factor in the designation of any ETC, and that the mere promotion of competition is not sufficient to meet the public interest test required by 47 U.S.C. 214(e).⁵ The public interest test should include a number of factors such as those outlined in previous NASUCA comments:

- As a minimum, a CETC should be required to offer a calling plan that provides unlimited local calling, equal access to IXC’s, and a monthly price comparable to that charged by the ILEC.
- As a minimum, CETCs should be required to submit to the consumer protection rules, including disclosure, notice, billing and collection rules, that apply to ILECs.

² The Commission reviews applications for ETC status where, as here, state commissions lack or have declined jurisdiction to make the required findings under 47 U.S.C. 214(e). See, e.g., Nextel Petition for Tennessee (June 12, 2003) at 4-5.

³ See Public Notice, FCC 03J-1 (rel. February 7, 2003).

⁴ NASUCA Comments (May 4, 2003).

⁵ Some parties have argued that the mere promotion of competition is sufficient to meet the public interest test. If that were true, there would have been no need for Congress to have included the public interest test, for the designation of additional ETCs in a service territory inevitably increases competition. Yet Congress specifically required a separate public interest finding before the designation of an additional ETC in the territories of both rural and non-rural ILECs: “Upon request and consistent with the public interest, convenience and necessity, the ... commission may, in the case of an area served by a rural telephone company, and shall, for all other areas, designate more than one carrier as the eligible telecommunications carrier” 47 U.S.C. 214(e)(2). A finding of public interest based solely on competition reads the public interest test out of the statute. Likewise, a holding that designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is consistent *per se* with the public interest, also reads the test out of the statute. For ETCs in rural telephone companies’ service areas, there is an additional requirement that the commission explicitly find the designation to be in the public interest.

- CETCs should be required to provide data to demonstrate their need for high-cost support.
- CETCs should be required to be able to provide service to all customers within the designated service area within a reasonable time.
- All ETCs should provide equal access.⁶

Further, with regard to Nextel's request to be designated as an ETC in the service area of United, a rural incumbent local exchange carrier, the Commission should be guided in its public interest determination under 47 U.S.C. 214(e)(2) by reference to the total amount of monthly per-line federal universal service high-cost support received by United's study area.⁷ In this specific situation, United receives only \$0.61 support per access line. This is far below the amount that would trigger consideration of whether the designation of an additional ETC in that area is in the public interest merely because of the amount of support the area currently receives.⁸

NASUCA appreciates the Commission's consideration of these positions as it concludes its deliberation on these applications.

Sincerely,

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⁶ Equal access meets the requirements of Section 254(c)(1) and does not contravene Section 332(c)(8) of the Act. Equal access provides a direct, tangible consumer benefit by placing the customer in charge of deciding which long distance plan is more appropriate for that customer. Equal access is even more important to rural customers who have fewer choices of carriers than urban customers.

⁷ This proposal was made by Billy Jack Gregg, Director of the Consumer Advocate Division for the State of West Virginia and member of the Federal-State Joint Board on Universal Service, at the en banc meeting of the Joint Board in Denver, Colorado on July 31, 2003. NASUCA supports the use of this proposal. A key detail of the proposal is that the Commission should be guided by the average amount of support received by the entire study area, rather than the per line support associated with individual wire centers. This will eliminate any incentive for the rural carriers to game the system through the disaggregation process.

⁸ The proposal is that in rural study areas receiving \$30 or more per line per month support, it should be presumed that only one ETC should be designated. In rural study areas receiving more than \$20 per month but less than \$30, it should be presumed that no more than two ETCs should be designated. Where support is less than \$20 per line per month, there should be no such limit on the number of ETCs designated.

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